

IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

LPA No.54 of 2007.

Date of decision: 19.9.2007

Shri Satish Seth

....Appellant

-Versus-

State of H.P. and others

....Respondents

Coram:

The Hon'ble Mr.Justice Deepak Gupta, Judge.

The Hon'ble Mr.Justice V.K.Ahuja, Judge.

Whether approved for reporting? No

For the Appellant: Mr.Sunil Chaudhary, Advocate vice
Mr.Anand Sharma, Advocate.

For the respondents: Mr.M.S.Chandel, A.G. with Mr.J.S.Guleria,
Law Officer for respondent No.1.
Mr.R.S.Kanwar, Advocate vice Mr.Adarsh
K.Vashishta, counsel for respondent No.2.

Deepak Gupta, J.(Oral)

This Appeal is directed against the order of learned single Judge of this Court dated 1.6.2007 passed in CWP No.683 of 2003 whereby he has rejected the writ petition filed by the petitioner.

The brief facts necessary for disposal of the present case are that the Municipal Council, Dalhousie received a written complaint dated 9.6.1999 from the Engineering and Sanitary Section that the appellant herein was engaged in raising unauthorized construction of a three storied building without any sanction or permission. Immediately thereafter the Municipal Council, Dalhousie issued a notice under Section 211 of the H.P. Municipal Act requesting the appellant to stop

the unauthorized construction and asking him to show cause why the construction already raised be not demolished. This notice was issued by the Executive Officer. Thereafter, the matter was placed before the House of the Municipal Council which confirmed the action of the Executive Officer vide Resolution No.379 dated 7.10.1999. The reply was filed by the appellant which was again placed before the House in its meeting on 10.11.1999. The appellant was given 7 days more time to remove the unauthorized construction and letter in this regard was sent on 25.11.1999. Since the appellant did not comply with these notices the matter was again placed before the House of the Municipal Council on 26.2.2000 wherein the House resolved vide Resolution No.423 to give last opportunity of 7 days to comply with the directions. Letter in this behalf was sent to the appellant on 6.3.2001. Again the appellant did not comply with the notices and continued to raise the construction and the matter was referred to the House time and again. Reference may be made to the meetings of the House dated 31.5.2000, 13.11.2000 and 8.3.2001.

Instead of stopping the construction the appellant in fact raised 3 RCC pillars and also started covering the balconies of the 3rd storey of his Hotel. Thereafter, the matter was again placed before the House on 24.5.2001 and another notice was issued. The appellant in reply to the notice submitted that he has only changed the front elevation of the Hotel. On verification these facts were not found to be correct and it was found that the appellant had raised six rooms by extending the existing building and huge amount of construction has been raised without any sanctioned plan. Thereafter, the Municipal Council vide Resolution No.167 dated 27.6.2001 ordered that the unauthorized construction be demolished. This order of demolition was challenged by the appellant before the learned District Judge, Chamba who dismissed the appeal on 29.11.2001. The Writ Petition was filed which has also been rejected by the impugned order. Hence the present appeal.

The main ground raised in the appeal is that the demolition has been ordered by the Executive Officer and not by the Municipal Council. This contention is totally without merit. As is apparent from the facts narrated above every time the matter was placed before the House and decision was taken by the Municipal Council. It is however obvious that the decision has to be conveyed by some Officer and in the present case the decision was conveyed by the Executive Officer. The appellant has further submitted that he has only changed the front elevation of the building and has not raised any unauthorized construction. This plea cannot be accepted. The Municipal Council as well as the learned District Judge have on the material on record come to a finding of fact that the appellant has raised unauthorized construction. It is apparent from the material on record that the appellant has disobeyed the law with impunity. He did not care to comply with the notices sent to him to stop the construction. Instead of stopping the construction he continued to raise unauthorized construction as if there was no law in existence. Such a person is not entitled to any discretionary relief.

Dalhousie is a beautiful hill station and the beauty of Dalhousie is being marred by unauthorized and unregulated construction. The learned Single Judge has rightly held that the appellant is not entitled to any relief since he has raised construction without any sanction from the municipal authorities.

In view of the above discussion, we are clearly of the view that there is no merit in the appeal which is accordingly dismissed.

**(Deepak Gupta),
Judge**

**September 19, 2007
PV**

**(V.K. Ahuja)
Judge**